Supreme Court, U.S.
FILED

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No.

IN THE SUPREME COURT OF THE UNITED STATES

In The

October Term, 1993

Charles E. Saunders

Petitioner

v.

George H. W. Bush, President and Chief Executive Officer of the Government of the United States of America; et al.

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Charles E. Saunders
Petitioner, pro se
5709 89th Street
Lubbock, Texas 79424
(806) 794-7043

36 pp

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Questions Presented For Review

(a) Is the Supreme Court of the United States, and inferior United States Courts, bound by the Constitution of the United States of America?

(b) Can the Constitution of the United States of America be altered or modified other than as provided by Article V of that majestic document?

(c) Can any law repugnant to the Constitution of the United States of America by upheld or legitimately enforced?

(d) Is the judicially created doctrine of sovereign immunity repugnant to the Constitution of the United States of America?

(e) Can the First Amendment right "to petition the Government for redress of grievance" be constitutionally denied by the federal government?

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List of Parties To This Proceeding

Pursuant to Rule 14.1 (b) of the Rules of the Supreme Court of the United States, petitioner files this certificate as to parties and others who may have an interest in the outcome of this case:

Parties

Petitioner is Charles E. Saunders, plaintiff in the District Court and the Appellant on appeal. Respondents, defendants in the District Court and appellees on appeal, are George H. W. Bush, [former] President of the United States and Chief Executive Officer of the Government of the United States; The Honorable Lynn Martin [former] Secretary of the United States Department of Labor; James E. White, Regional Solicitor, United States Department of Labor; Daniel Curran, an attorney for the United States Department of Labor and Unknown Co-Conspirators.

The Honorable Janet Reno, Attorney General of the United States; The Honorable Drew Days, Solicitor General, United States Department of Justice: Paul E. Coggins, Esq., United States Attorney of the Northern District of Texas and Howard A. Borg, Esq., Assistant United States Attorney and counsel of record for the respondents also have an interest in the outcome of this case.

Jurisdiction

This action seeking redress of civil rights violations by the [former] President of the United States and other government

officials draws in question the constitutionality of the doctrine of sovereign immunity as applied to individuals. Petitioner also questions the power of the Supreme Court of the United States to promulgate, in essence and in fact, the doctrine of sovereign immunity as the law of the land.

The federal constitutional questions were timely raised by the petitioner in the district court as well as in the Court of Appeals below. Both the district court and the Court of Appeals completely ignored this vital and unprecedented constitutional challenge to substantially redefine the judicially created doctrine of sovereign immunity as it relates to the Petition Clause of the First Amendment to the Constitution of the United States of America.

Opinions Below

The final order and judgment of the Court of Appeals was entered on February 28, 1994, affirming the judgment of the district court in all respects. A petition for rehearing suggesting consideration of rehearing en banc was denied on March 22, 1994. On April 5, 1994, an Order issued granting stay of mandate to May 5, 1994, to allow time for an application for a writ of certiorari to be perfected and filed in the Supreme Court of the United States. (Appendix, A-1 through A-6, infra.)

Statutory Provisions

The jurisdiction of the Supreme Court of the United States to review the decision of the United States Court of

Appeals for the Fifth Circuit on appeal is conferred by 28 U.S.C. § 1254 (1).

The following decision sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case:

Nixon v. Fitzgerald, 457 U.S. 731, 102 S.Ct. 2690, 73 L.Ed.2d 349 (1982). There a former President of the United States, who sought review of interlocutory order denying his absolute immunity claim, presented serious and unsettled and therefore appealable question to the court of appeals; thus, the Supreme Court had jurisdiction to determine immunity question based on its certiorari jurisdiction after the court of appeals dismissed appeal for lack of jurisdiction.

The majority opinion of this Court, then, held, "It is settled law that the separation-of-powers doctrine does not bar every exercise of jurisdiction over the President of the United States" [citations omitted]..."When judicial action is needed to serve broad public interest--as when the Court acts, not to derogation of the separation of powers, but to maintain their proper balance, [citations omitted]...the exercise of jurisdiction has been held warranted." id. at 753, 754.

Constitutional Provisions

Article V of the Constitution of the United States reads as follows:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall proposes Amendments to this Constitution, or, on the Application of the Legislatures of two

thirds of several States, shall call a Convention for proposing Amendments, which in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislature of three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

Amendment I to the Constitution of the United States reads as follows:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Eighth Amendment to the Constitution of the United States of America reads as follows:

Excessive bail shall be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Statement of the Case

This case involves a pro se litigant who claims to have persevered over twenty-one years of politicized racially motivated persecution and oppression by officers, agents and/or employees of various and sundry departments and agencies of

the Government of the United States, under Republican administrations of the government, as a result of his "whistle-blowing" activities concerning racial discrimination in the United States Air Force prior to his retirement from active duty in July of 1975 in addition to his relentless quest for political, economic, and social equality pursuant to constitutional and statutory law.

Jurisdiction in Court of First Instance

On March 17, 1992, petitioner filed suit in District Court pursuant to 28 U.S.C. §§ 1331 and 1343 to remedy violations of rights inured to petitioner under the First, Fifth, and Eighth Amendments to the Constitution of the United States of America, and Title 42 U.S.C. §§ 1981 and 1985, seeking redress for malicious political persecution and malicious prosecution in action taken by the respondents related to Department of Labor administrative proceeding against Petitioner and his company.

On May 15, 1992, the respondents sought dismissal on the ground of absolute immunity, qualified immunity, insufficient pleading to state a cause of action, lack of jurisdiction under the Federal Tort Claims Act, as well as other grounds.

On May 21, 1992, petitioner filed First Amended Complaint which remained basically the same as the original complaint. (Changes included: substitution of 42 U.S.C. 1981 for 42 U.S.C. § 1983; deletion of 28 U.S.C. § 1346 (b) from the

Jurisdictional section; deletion of United States Department of Labor as a party defendant and substituted Lynn Martin, Secretary of United Department of Labor as a party defendant).

On June 1, 1992, respondents filed motion supported by memorandum re-urging dismissal of petitioner's First Amended Complaint. On June 2, 1992, petitioner filed a Responsive Motion Opposing Motion to Dismiss. On September 24, 1992, the Court dismissed respondents' motion to dismiss original complaint as moot, ruling petitioner's Amended Complaint superseded the original complaint.

On October 5, 1992, The District Court entered an order granting the respondents motion to dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted and imposed sanctions against petitioner for filing frivolous litigation. Notice of Appeal was filed by petitioner on November 4, 1992. Pursuant to 28 U.S.C. § 1291, appeal was filed in the Court of Appeals on November 23, 1992. On February 28, 1994, the Court of Appeals entered order affirming the judgment of the district court in all respects.

Reasons for Granting the Writ

The district court as well as the Court of Appeals apparently miss comprehend the gravamen issue of the Amended Complaint and subsequently overlooked an essential constitutional issue raised by the petitioner.

At each and every stage of the proceedings the petitioner have questioned the constitutionality of the judicially

created doctrine of sovereign immunity and challenged the power of the Supreme Court of the United States to promulgate it as the law of the land -- the threshold questions related to the judgment of the district court below and the affirmance of that judgment by the Court of Appeals. Yet, both the district court and the per curium appellate review completely ignored such a vital and unprecedented constitutional challenge to substantially redefine the judicially created doctrine of sovereign immunity as it relates to the Petition Clause of the First Amendment to the Constitution of the United States of America.

Petitioner's question concerning the constitutionality of the judicially created doctrine of sovereign immunity raised below remains unanswered and unaddressed by the learned counsel to the respondents and it has been completely ignored by the federal courts. Also, as in the instant case, the doctrine of sovereign immunity astutely mask and conceals the principles underlying **Marbury v. Madison**, 1 Cranch 137 (1803) and **Bivens v. Six Unknown Fed. Narcotics Agents**, 403 U.S. 388 (1971), by sanctioning a Legislative Act of the Congress repugnant to the Petition Clause of the First Amendment to the Constitution of the United States of America. Included among this genre of Acts by the Congress repugnant to Constitution are the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346, 28 U.S.C. § 2671, 28 U.S.C. § 2673 and 28 U.S.C. 2679, all of which surreptitiously "abridge the freedom" ... to petition the Government for redress of grievances".

The rulings of the federal courts below are in conflict with a plain reading of the Constitution of the United States of America and they are also rejected by a scholarship of American history as it relates to the rationale of the former Chief Justice John Marshall in **Marbury v. Madison**, supra, where writing for the majority he emphasized the fact that:

> It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States, generally, but those only which shall be made in pursuance of the constitution, have that rank.

Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument, id. at 180.

Petitioner echoes former associate Justice Black's eloquent dissent of the majority in **Barenblatt v. United States**, 360 U.S. 109 (1958), to emphasize a highly significant material issue of law and fact, and that is, here as then, "ultimately all the questions in this case really boil down to one-- whether we as people will try fearfully and futility to preserve democracy by adopting totalitarian methods, or whether in accordance with our traditions and our Constitution we will have the confidence and courage to be free." id. at 162.

To this point in time the federal judiciary has taken a path which can lead to nothing but "trouble and perplexity, breeding hatred and enmities between worthy families, affronts and disgust between persons of the same public affection and interest, and to the rejoicing of none but public adversaries. All which, and many more inconveniences, can only be avoided, by referring all such cases to the usual Trials and final determinations of law." ibid.

The recent revelation of past horrendous activities conducted by the federal government attest the fact that power corrupts and absolute power, as manifest by the doctrine of sovereign immunity, can arbitrarily and capriciously deprive a citizen of the United States of America of what is believed to be a birthright and chief inheritance of American citizenship. This Court is the guardian, and the protector, of the fundamental rights guaranteed by our written constitution. And this Court cannot, without abrogating its Article III mandate, avoid or further ignore the issue of sovereign immunity challenged by the petitioner as being unconstitutional. The doctrine of sovereign immunity prostitutes the Petition Clause of the First Amendment to the Constitution of the United States of America and frustrates its purpose contrary to the spirit reflected in the holding of this Court in **Marbury v. Madison**, supra.

This issue, therefore transcends any so-called special interest group to touch upon the very essence of the moral democratic values guaranteed and supposedly protected by the

Constitution of the United States. To that extent, the nuances of law should favor the promotion of justice if the constitutional edict of the Bill of Rights have any meaning at all.

Petitioner submits that the Supreme Court of the United States has, in essence and in fact, usurped the authority of the Congress and of the several States contrary to the provisions of Article V of the original constitution by employing the doctrine of sovereign immunity to surreptitiously alter, modify, or even judicially abridge the Petition Clause of the First Amendment to the Constitution of the United States.

Unless the amoral doctrine of sovereign immunity is effectively challenged and substantially redefined for the purposes of development no amount of individual programming will alter the patterns of crime and violence on the people and property of this nation.

The federal judiciary has now entangled itself in a "Catch 22" situation. And the longer that the truth is suppressed the more potent it becomes when finally exposed to critical intellectual examination. This Court is now faced with an unprecedented constitutional dilemma which must be resolved in a manner that does not clearly belie the Constitution of the United States, to preclude public decadence of confidence and respect for what is carved in the marble over the entrance of the building which house this August body, to-wit: "Equal Justice Under Law".

This sordid episode should never be repeated because the doctrine of sovereign immunity cannot survive a serious critical intellectual examination by this Court which would allow it to continue to bedevil the majesty of the Constitution of the United States. In so holding, not only the petitioner will have won, but serving God our Father, Christ our Redeemer and Man our Brother, the American public will be the real winners. One nation under God with liberty and justice for all.

Truth cannot be discredited by any authority or power on this Earth, but until men and women have a right to petition the government for redress of grievances, real or imagined, we will never have a "government of the people, by the people, and for the people". As long as the people are unable to have their "day in court", barred by the so-called sovereign immunity doctrine, "Equal Justice Under Law" will remain an unachievable theoretical illusion and the fact "what is done unto any one, may be done unto every one" becomes a virtually unassailable reality.

Conclusions

Therefore, since the respondents failed to plead or otherwise defend in the federal courts below, the ultimate issue involved in this case turns on the constitutional power of the Supreme Court of the United States to uphold the doctrine of sovereign immunity as it is conferred upon any officer, agent, and/or employee of the federal government in relation to the

Petition Clause of the First Amendment to the Constitution of the United States of America.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted. And now, May God Bless America.

Respectfully submitted,

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Petitioner, pro se
5709 89th Street
Lubbock, Texas 79424
(806) 794-7043

Certificate of Service

I, Charles E. Saunders, pro se petitioner herein, hereby certify that on the 22ND day of April, 1994, true and correct copies of the foregoing Petition For Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit were served upon the several parties as follows:

1. On the respondents, by serving their counsel of record, Howard A. Borg, Esq., Assistant United States Attorney via certified mail with return receipt requested, at 801 Cherry Street, Suite 1700, Fort Worth, Texas.

2. On the Honorable Drew Days, Solicitor General, United States Department of Justice, via certified mail with return receipt requested, at 10th Street and Constitution Avenue, N. W., Washington, D. C. 20001.

Charles E Saunders
Charles E. Saunders

United States Court of Appeals

Fifth Circuit

No. 92-1962

Summary Calendar.

Charles E. SAUNDERS, Plaintiff-Appellant,

v.

George H. W. BUSH, President and Chief Executive Officer of the United States of America, et al., Defendants-Appellees.

Feb. 28, 1994.

Appeal from the United States District Court for the Northern District of Texas.

Before GARWOOD, SMITH, AND DeMOSS, Circuit Judges.

DeMOSS, Circuit Judge:

I. BACKGROUND

This appeal concerns the alleged "malicious political persecution" and malicious prosecution of plaintiff-appellant Charles E. Saunders ("Saunders"), a pro se litigant, by officers, agents and/or employees of the United States, in violation of the Federal Tort Claims Act[1] ("FTCA"), the First, Fifth, and Eighth Amendments of the United States Constitution, and 42 U.S.C. §§ 1981 and 1985.

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[1] 28 U.S.C. § 2671, *et seq.* (1965 & Supp. 1993).

Saunders' suit has its origin in an administrative proceeding brought against him by the United States Department of Labor ("DOL"). On March 5, 1990, the Acting Administrator of DOL's Wage and Hour Division filed a complaint with DOL's Office of Administrative Law Judges, through defendant James E. White, Regional Solicitor for DOL's Office of the Solicitor of Labor. The DOL complaint alleged that Saunders, doing business as American Shamrock Building Maintenance ("American Shamrock"), violated certain provisions of the McNamara-O'Hara Service Contract Act[2] ("McNamara-O'Hara Act") pertaining to classification of employee wage rates, and calculation of employee work hours and holiday pay.

A formal hearing on the DOL complaint was conducted before an Administrative Law Judge ("ALJ") on October 30-31, 1991. Defendant Daniel Curran, an attorney with DOL's Office of the Solicitor, represented DOL in this hearing. On February 27, 1992, the ALJ issued a Decision and Order finding no violations of the McNamara-O'Hara Act by Saunders d/b/a American Shamrock and ordering DOL to remit all monies withheld from payment under DOL's contract with Saunders. DOL's Acting Administrator is currently appealing the ALJ's Decision and Order.

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[2] 41 U.S.C. § 351, *et seq.*; 29 C. F. R. Parts 4, 6.

On March 17, 1992, Saunders filed the instant suit, claiming that the defendants falsely, maliciously and without probable cause, conspired to bring a claim against him d/b/a American Shamrock for violations of the McNamara-O'Hara Act.[3] Specifically, Saunders' amended complaint asserts that "defendant White, in conspiracy with unknown others[,] acted with malice and without probable cause in issuing the complaint...and instigating the prosecution, ... with the intent to injure and damage [Saunders]". He further charges that "defendant George H. W. Bush, with constructive knowledge[,] conspired and acted in concert with the defendant co-conspirators by giving tacit approval of [DOL's] abuse of the legal process to injure and damage [Saunders]". Saunders' amended complaint contains no allegations pertaining to defendant Lynn Martin, the former Secretary of Labor, and defendant Curran's role in this matter.

According to Saunders' amended complaint, the defendants undertook these acts of alleged "malicious persecution" and malicious prosecution in direct retaliation for a civil rights complaint previously filed by Saunders against the United States Department of Housing and Urban Development

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[3] Saunders filed his original complaint on March 17, 1992. On May 15, the defendants filed their initial motion to dismiss. Thereafter, on May 21, Saunders filed an amended complaint. The defendants responded to Saunders' amended complaint with a second motion to dismiss, filed June 1. In addressing the defendants' subsequent motion, the district court ruled that Saunders' amended complaint was controlling.

("HUD") and former HUD Secretary Jack Kemp.[4] These acts are also alleged to be in furtherance and continuation of twenty-one years of harassment, attempted intimidation, and political persecution [of Saunders] resulting originally from his "whistle-blowing" concerning racial discrimination in the United States Air Force... [and] his unrelenting quest for social, economic and political equality".

When the defendants moved to dismiss Saunders' suit, the district court obliged. The court construed Saunders' amended complaint to charge the defendants with malicious prosecution under the FTCA and dismissed such claims with prejudice for lack of subject-matter jurisdiction. Fed.R.Civ.P. 12(b)(1). It also dismissed Saunders' § 1981 and § 1985 claims without prejudice for failure to state a claim upon which relief can be granted. Fed.R.Civ.P. 12(b)(6). Rule 11 sanctions were imposed against Saunders, calculated as a $500 fine, reasonable costs and attorneys' fees. Saunders filed this timely appeal on November 4, 1992, requesting review of the district court's dismissal of his claims and of the imposition of Rule 11 sanctions.

II. DISCUSSION

A. Dismissal of FTCA Claims under Rule 12(b)(1)

[4] Saunders initially filed this administrative complaint against HUD in November, 1989.

The district court correctly treated Saunders' malicious prosecution claims as tort claims under the FTCA. The FTCA creates a statutory cause of action against the United States for torts committed by federal officials within the scope of their employment. 28 U.S.C. §2671, *et seq.*. The tort of malicious prosecution, however, is not cognizable under the FTCA. *Id.* § 2680 (h). Moreover, persons seeking recovery under the FTCA must first present their "claim to the appropriate Federal agency", and such claim must be "finally denied by the agency" before suit may be brought in Federal Court. *Id.* §2675 (a). In light of this law, the district court correctly dismissed Saunders' malicious persecution claims under the FTCA. *Reynolds v. United States*, 748 F.2d 291 (5th Cir. 1984).

B. Dismissal of *Bivens*, §1981 and § 1985 Claims of Immunities Grounds

Saunders' amended complaint charges the defendants with violating the First, Fifth, and Eighth Amendments as well as §1981 and §1985 of Title 42.[5] Apparently the district court

[5] Saunders' pleading explicitly states that the defendants' malicious prosecution of the DOL complaint was a form of cruel and unusual punishment in violation of the Eighth Amendment. The pleading is les clear as to the bases of Saunders' first and fifth amendment claims. We glean from his amended complaint, responsive motions and appellate briefs that Saunders is claiming that the alleged malicious prosection violated his fifth amendment right to equal protection. Based on a combined reading of the aforementioned documents, it does not seem that Saunders predicates any recovery or relief on an alleged first amendment violation. Rather, Saunders seems to be using his first amendment right to petition the courts for redress as a sword with which to strike down the defendants immunities defense.

did not construe Saunders' amended complaint to raise any *Bivens* claims. *Bivens v. Six Unknown Fed. Agents*, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971) (recognizing a right implied directly under the Constitution to recover damages against a federal official for a violation of a constitutional right). While we find no fault in the court's construal, we nevertheless, in the interest of thoroughness, address the dismissal of any *Bivens* claim. Assuming without deciding that *Bivens* claims are cognizable under these Amendments, we conclude that such claims, as well as his § 1981 and § 1985 claims are barred in the present action by the defendants' absolute and qualified immunities.

Former President Bush enjoys absolute immunity from damage liability for acts within the " 'outer perimeter' " of his official responsibility. *Nixon v. Fitzgerald*, 457 U.S. 731, 755, 102 S.Ct. 2690, 2704, 73 L.Ed.2d 349 (1982). Here, the only "act" with which the President is charged is "giving tacit approval[,]" as "the president and chief executive officer of the Government of the United States of America[,]" of the DOL's alleged "abuse of the legal process to injure and damage plaintiff". This allegation charges the former President with conduct within the perimeter of this responsibilities as chief of the executive branch. Therefore, he is absolutely immune from suit. *See Id.* at 756, 102 S.Ct. at 2705.

Defendant White is charged with liability for his

"instigate[ion] [of] the [DOL] prosecution[.]" "[O]fficials who are responsible for the decision to initiate or continue a proceeding subject to agency adjudication are entitled to absolute immunity form damages liability for their parts in that decision". *Butz v. Economou*, 438 U.S. 478, 516, 98 S.Ct. 2894, 2916, 57 L.Ed.2d 895 (1978). White is entitled to absolute immunity from suit. *See Id.*

Saunders does not make any allegation as to Defendant Curran's role in the DOL prosecution. However, the record reflects that Curran was the DOL attorney who actually prosecuted the complaint against Saunders at the two day hearing. "[A]n agency attorney who arranges for the presentation of evidence on the record in the course of an adjudication is absolutely immune from suits based on the introduction of such evidence". *Id.* at 516, 98 S.Ct. at 2916. Curran is absolutely immune from suit. *See Id.*

Federal officials are accorded qualified immunity from liability for damages arising from conduct which is not violative of "clearly established law" of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 807, 819, 102 S.Ct. 2727, 2732, 2738, 73 L.Ed.2d 396 (1982); *Austin v. Borel*, 830 F.2d 1356, 1358-59, 1363 (5th Cir. 1987), *reh'g denied, en banc*, 836 F.2d 1346 (5th Cir. 1987). Saunders not only fails to allege any facts indicating that defendant Martin

violated clearly established law, but also fails to make *any* allegations against Martin whatsoever.[5] Martin is entitled to immunity as well.

C. Rule 11 Sanctions

In previous matters of which the district court took judicial notice, Saunders' claims against then President Reagan were dismissed as frivolous on the basis of the President's absolute immunity. Saunders was warned that sanctions would be imposed if he filed another frivolous suit. Despite this warning, Saunders filed yet another frivolous suit, this time against former President Bush. We find no abuse in the district court's discretionary imposition of sanctions.

III. CONCLUSION

The district court's judgment is in all respects AFFIRMED.

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[6] Saunders may be relying on the doctrine of *respondeat superior* as a basis for imposing liability on the former Secretary as well as the former President. However, that doctrine of vicarious liability is not a permisssible basis for holding these defendants liable. *See Abate v. Southern Pacific Transp. Co.*, 993 F.2d 107, 111 (5th Cir. 1993); *cf. Monell v. Dept of Soc. Serv. of City of N.Y.*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-1962
Summary Calendar

D.C. Docket No. 1:92 CV 049 C

CHARLES E. SAUNDERS,

Plaintiff- Appellant,

versus

GEORGE H. W. BUSH, President and Chief Executive Officer of the United States of America, ET AL.,

Defendants- Appellees.

Appeal from the United States District Court for the Northern District of Texas

Before GARWOOD, SMITH AND DeMOSS, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the record on appeal and was taken under submission on the briefs on file.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the District Court in this cause if affirmed.

IT IS FURTHER ORDERED that plaintiff-appellant pay top defendants-appellees the costs of appeal to be taxed by the Clerk of this Court.

February 28, 1994

ISSUED AS MANDATE:

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1962

CHARLES E. SAUNDERS,

Plaintiff-Appellant,

versus

GEORGE H. W. BUSH, President and Chief Executive Officer of the United States of America, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Texas

ON SUGGESTION FOR REHEARING EN BANC

(Opinion 2/28/94, 5 Cir., , F.3d)

(March 22, 1994)

Before GARWOOD, SMITH, AND DeMOSS, Circuit Judges.

PER CURIAM:

(X) Treating the suggestion for rehearing en banc as a petition for panel rehearing, it is ordered that the petition for panel rehearing is DENIED. No member of the panel nor Judge in regular active service of this Court having requested that the Court be polled on rehearing en banc (Federal Rules of Appellate Procedure and Local Rule 35), the suggestion for Rehearing En Banc is DENIED.

( ) Treating the suggestion for rehearing en banc as a petition for panel rehearing, the petition for panel rehearing is DENIED. The judges in regular active service of this Court having been polled at the request of one of said judges and a majority of said judges not having voted in favor of it (Federal Rules of Appellate Procedure and Local Rule 35), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

Original signed by DeMoss
United States Circuit Judge

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

April 5, 1994

Mr. Charles E. Saunders
5709 89th St.
Lubbock, Texas 79424

No. 92-1962 - SAUNDERS v. BUSH
(D.C. No. 1:92-CV-049-C)

MANDATE STAYED TO AND INCLUDING May 5, 1994

This Court has this day granted a stay of the issuance of the mandate to the date as shown above. If during the period of the stay there is filed with this office a notice from the Clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari, the mandate shall issue immediately under Rule 41, FRAP.

Under revised Rule 19.1 of the Supreme Court, effective June 30, 1980, a request to certify the record prior to action by the Supreme Court on the petition for certiorari should not be made as a matter of course but only when the record is deemed essential to a proper understanding of the case by that court.

A copy of the opinion, judgment, or Rule 47.6 Decision, and

denial of rehearing are still required by the Supreme Court to be incorporated as an appendix to your petition. Enclosed are copies of the said documents which have been entered in this cause.

Very truly yours,
CHARLES R. FULBRUGE III. Clerk

By: _____
Deputy Clerk

Enclosures
cc: Mr. Howard Alan Borg

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

CHARLES E. SAUNDERS	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
GEORGE H. W. BUSH, President and Chief Executive Officer of the Government of the United States of America; et al.,	)	
	)	Civil Action No.
Defendants.	)	1-92-CV-049-C

ORDER

Came on to be heard Defendants' Motion to Dismiss Plaintiff's First Amended Complaint in the above-styled and-numbered cause. Based upon review of the pleadings and information filed by the parties hereto, the court orders:

1. Plaintiff's First Amended Complaint with respect to the malicious prosecution tort claim is hereby dismissed with prejudice, pursuant to Fed. R. Civ. P. 12(b)(1), as the court finds subject matter jurisdiction lacking because:

a. Plaintiff has not exhausted his administrative remedies pursuant to 28 U.S.C. §2675(a); and

b. 28 U.S.C. §2680 creates a statutory bar to

malicious prosecution actions against government officials and/or agents acting in their official capacity.

2. Plaintiff's First Amended Complaint with respect to his 42 U.S.C. §§1981 and 1985 claims are hereby dismissed without prejudice pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief can be granted.

Defendants' Motion to Dismiss Plaintiff's First Amended Complaint requests that Rule 11 sanctions be imposed on Plaintiff. Based upon the court's review of the pleadings in the instant case and given Plaintiff's history of frivolous litigation in this court, the court orders the following:

1. Plaintiff is found in violation of Fed. R. Civ. P. 11, by virtue of filing this lawsuit against President Bush. Pro se Plaintiff has previously filed lawsuits in this court against the sitting President of the United States, and on those occasions was informed of the President's absolute immunity from suits for money damages alleged to have resulted from executive decisions. Despite knowledge of this information, and an admonition from the court not to repeat such meritless pleadings or suffer monetary sanctions (*see Saunders v. Reagan*, CA-5-88-025-C (N.D. Tex. 1988)) (unreported) (Order of Dismissal With Prejudice, May 18, 1988, at 3), Plaintiff has filed this frivolous and meritless claim.

2. Plaintiff commenced this lawsuit with full knowledge

not only that the President was immune from tort liability when acting in his official capacity, but also that Rule 11 sanctions existed and were a real possibility for him if he filed another frivolous lawsuit. This knowledge is not only demonstrated by prior proceedings in this court, but also that Plaintiff himself moved this court to impose Rule 11 sanctions on Defendants' attorneys. Therefore, because pro se Plaintiff operated with knowledge of this Rule and warning that he would receive such sanctions for filing a frivolous lawsuit, no hearing or opportunity to respond is necessary to further satisfy due process.

3. The plain language of rule 11 makes it clear that the court may *sua sponte* impose sanctions on persons found to be in violation of its provisions.

4. Plaintiff shall suffer the following sanctions:

a. Plaintiff shall pay the sum of $500,000;

b. Plaintiff shall pay reasonable costs and attorney fees to the United States for the costs incurred in the defense of this suit;

c. Plaintiff shall not be permitted to file, and the clerk is hereby ordered not to accept for filing, any further complaints in this or any other matter in this court unless and until Plaintiff pays, in full, the fines, costs and fees hereby assessed or unless this court grants.

Plaintiff special leave to file.

5. The court will decide the attorney's fee award from affidavits. As required by *Nisby v. Commissioners Court of Jefferson County*, 798 F.2d 134, 137 (5th Cir. 1986), Defendants' affidavits shall be in the form necessary to enable the court to make the required *Johnson* analysis. *See Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-9 (5th Cir. 1974), and *Cooper Liquor v. Adolph Coors Co.*, 624 F.2d 575, 581 (5th Cir. 1980) (*Cooper Liquor II*). Such affidavits and any supporting memorandum shall be filed no later than October 20, 1992. Plaintiff is hereby granted leave of court to file a responsive memorandum and affidavit if filed no later than October 30, 1992.

SO ORDERED.

The Clerk shall furnish a copy hereof to any party appearing pro se by certified mail/return receipt requested and to each attorney of record by first class mail.

Dated October 5, 1992.

SAM R. CUMMINGS
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

CHARLES E. SAUNDERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
GEORGE H. W. BUSH, President and Chief Executive Officer of the Government of the United States of America et al.,	)	
	)	Civil Action No.
Defendants.	)	1-92-CV-049-C

JUDGMENT

By order of October 5, 1992, Plaintiff's cause of action was dismissed with prejudice in part and dismissed without prejudice in part. That order further imposed monetary sanctions against Plaintiff and ordered that no further written submissions be accepted from Plaintiff until those sanctions were satisfied. By order of even date, this court ordered that no attorney fees be awarded in favor of the Defendants as a part of those monetary sanctions.

It is, accordingly, ORDERED, ADJUDGED, and DECREED that Plaintiff take nothing as against Defendants. It is further ORDERED, ADJUDGED, and DECREED that

Plaintiff pay monetary sanctions as stated in the two orders, and that no further written submissions be accepted from Plaintiff unless and until those sanctions are paid.

The clerk shall furnish a copy of this order by certified mail/return receipt requested to the Plaintiff, who is proceeding pro se, and to each attorney of record.

Dated December 1, 1992.

SAM R. CUMMINGS
United States District Judge